



FINANCIAL SERVICES FEDERATION

**FSF RESPONSES TO MBIE OPTIONS PAPER QUESTIONS 36 – 39 ABOUT
MISUSE OF THE FINANCIAL SERVICES REGISTER**

Thank you for the opportunity for the Financial Services Federation (“FSF”) to respond to Part 3 of the Options Paper addressing the issues relating to the financial service providers register.

36 **Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?**

As a preliminary comment, the FSF intends to address Q36 - Q39 on the basis that when Q36 and other questions refer to “misuse of the FSPR”, the ‘misuse’ being referred to is what is described on page 51 of the Options Paper as -

“... some offshore-controlled firms have sought to register on the FSPR in order to take advantage of New Zealand’s reputation as a well-regulated jurisdiction. These firms then misrepresent that they are licensed or actively regulated in New Zealand.”

Addressing Q36 on that basis, the FSF notes the following in respect of the 6 options put forward on pages 52 -54 of the Options Paper:

- a) Option 1: The FSF has no difficulty in principle with an offshore party being required to show that it is properly licensed in its home jurisdiction, and with that being a prerequisite to New Zealand registration. That does seem likely to help deter misuse of the FSPR, despite the fact that some additional resource may then be necessary to assess applications. The FSF doubts if any such additional resource would be material, and would support a change of this kind.

That said, proof of registration in an applicant’s home jurisdiction will not of itself prevent offshore parties from misrepresenting the extent to which they are regulated in New Zealand to offshore clients, so while this change may be worth making, the FSF considers that it cannot be a complete answer to any such misuse of the FSPR.

As regards the part of Option 1 that suggests requiring offshore parties to hold a certain amount of indemnity cover or of bonding, this seems to the FSF likely to be a barrier which might deter otherwise desirable financial service providers from registering in New Zealand, and which may place them at a disadvantage relative to their New Zealand-based competitors. In view of that, and as this possibility also seems unlikely of itself to prevent applicants from subsequently misrepresenting the extent to which they are regulated in New Zealand, the FSF would not support this;

- b) Option 2: The FSF reads this option as requiring not only that offshore registrants have a place of business in New Zealand, but also that they must actually use it to offer services to New Zealanders, as opposed to offering services from New Zealand solely to customers who are also offshore. Option 2 would permit non-registration, or deregistration, of any offshore parties that do not meet this requirement.

This FSF considers that to be a desirable change, because –

- i. Section 2 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (“FSP Act”) refers to a purpose of the FSP Act as being to protect

participants in the financial markets, which the FSF perceives principally to be a reference to New Zealand participants in New Zealand markets;

- ii. Similarly, section 9 of the FSP Act says a purpose of the FSP Register is to assist New Zealand regulators to regulate financial service providers;
- iii. The linkages of both those points to activity in New Zealand make it logical that an entity should be required to be engaged in activity in New Zealand, and have customers in New Zealand, in order to be registered;
- iv. If a registered entity does have customers in New Zealand, there is no element of misrepresentation in it telling offshore customers that it is regulated in New Zealand: in a real sense it will be.

That seems to the FSF to address, and be likely to prevent, the “misuse” of the FSP register which this part of the Options Paper seeks to prevent.

- c) Option 3: In so far as the “legitimate connection to New Zealand” involved in this option means having a place of business in New Zealand, the Act already requires exactly that. This suggestion seems unlikely to add meaningfully to that existing requirement, and distinguishing between a place of business in New Zealand that is a “legitimate connection to New Zealand” and one that is not would in practice be challenging. This option thus seems to the FSF unlikely to add anything other than complication to what might better be achieved by Option 2, above.
- d) Option 4: Requiring trust and company service providers to register in order to align the scope of the registration requirement to the AML / CFT legislation is sensible, especially in that the register has always had AML roots. However doing so is not likely to solve any problems caused by parties who are *already* abusing their registration on the register;
- e) Option 5: Limiting public access to the register seems at odds with the concept of the public register that was enacted in 2008, and the FSF doubts if doing so would be likely to assist in preventing misuse of the register in any case. The FSF also agrees with the two “con” items noted in respect of this item on page 53, and consequently does not support this option;
- f) Option 6: Similar comments apply to this Option, which suggests making the register a “non-public notification list.” In so far as an objective of the register was to be a publicly searchable source of information for consumers linking to the Financial Advisers Act and to the disputes resolution schemes also provided for by the FSP Act, this option would change the concept of the register in a manner that seems inconsistent with those objectives, and this Option is not supported by the FSF.

37 **What option or combination of options do you prefer and why? What are the costs and benefits?**

As may already be evident from our response to question 36 above, the FSF sees Option 2 as the best option, as it most directly responds to the misuse of the FSP register which the Options Paper seeks to prevent.

The FSF would however also support –

- a) At the same time, requiring offshore parties applying for registration to also show that they are properly licensed in their home jurisdictions (as proposed in the Options Paper as part of Option 1); and

- b) Requiring trust and company service providers to register in order to align the scope of the registration requirement to that of the AML /CFT legislation (as proposed in the Options Paper as part of Option 4).

The benefits of doing so would be to help prevent the misuse of the FSP which the Options Paper seeks to combat, while any costs involved would be incurred only by parties seeking to register. The FSF would not expect those costs to be material, and in the FSF's view a bona fide applicant for registration would consider them acceptable.

38 **What are the potential risks and unintended consequences of the options above? How could these be mitigated?** The FSF has nothing further to add to what it has already said about the consequences of the options in Q 36 above.

39 **Would limiting public access to parts of the FSPR help reduce misuse?** If the "misuse" being targeted is as the FSF has noted at the beginning of its response to Q36 above, then the FSF cannot see how limiting public access to the register would address that. If the problem is misleading marketing by foreign entities leveraging their New Zealand registration, then access to the register by the New Zealand public does not seem relevant to that problem.

If you require any further information or input from the FSF, please do not hesitate to contact me.



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